

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

GREGORY E. SHORT

APPELLANT,

**v.
SOUTHERN UNION COMPANY,
ET AL.**

RESPONDENTS.

DOCKET NUMBER WD74096

DATE: April 10, 2012

Appeal From:

Jackson County Circuit Court
The Honorable Edith L. Messina, Judge

Appellate Judges:

Division One: Cynthia L. Martin, Presiding Judge, Thomas H. Newton, Judge and Alok Ahuja, Judge

Attorneys:

Michael P. Joyce, Kansas City, MO, for appellant.

Roy C. Bash and Christopher L. Johnson, Kansas City, MO, for respondent Stadium Industrial Park Association, Inc.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
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GREGORY E. SHORT,

APPELLANT,

v.

**SOUTHERN UNION COMPANY,
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RESPONDENTS.

No. WD74096

Jackson County

Before Division One: Cynthia L. Martin, Presiding Judge, Thomas H. Newton, Judge and Alok Ahuja, Judge

Gregory Short ("Short") filed a petition for the establishment of a private road pursuant to section 228.342. The trial court granted a directed verdict in favor of the defendants, Southern Union Company d/b/a Missouri Gas Energy ("Southern Union") and Stadium Industrial Park Association, Inc. ("Stadium Industrial") because Short failed to meet his burden of showing "strict necessity," as required by section 228.342. The trial court construed section 228.342 to require Short to prove that the property in question could lawfully be put to an industrial use in order to demonstrate that a "strict necessity" existed. Short appeals, arguing that the trial court erroneously construed section 228.342. Conversely, Stadium Industrial argues that the trial court's judgment can be upheld for a distinct reason -- Short's petition was barred by the statute of limitations.

REVERSED AND REMANDED.

Division One holds:

(1) The trial court erred in requiring Short to prove that his property could lawfully be put to an industrial use. The definition of "strict necessity," as used in section 228.342, encompasses both the establishment of a private road when no access exists, and the establishment of improved private access, even if some access already exists, sufficient to use property for an intended lawful purpose. The record unequivocally established that Short demonstrated that his property has no lawful ingress or egress to a public road. Thus, "strict necessity" was established.

(2) The trial court's judgment cannot be otherwise affirmed on the basis of an expired statute of limitations. So long as "strict necessity" exists, its effect on property is of an appurtenant and continuing nature. As such, the statute of limitations cannot run because there is a continuing wrong. Short's property continuously lacked access, so the statute of limitations did not bar his petition for the establishment of a private road.

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